

Objection Deadline: February 27, 2019 at 4:00 p.m. (AST)

Hearing Date and Time: TBD by Court, if necessary

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

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In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, et
al.,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE EMPLOYEES RETIREMENT SYSTEM OF
THE GOVERNMENT OF THE
COMMONWEALTH OF PUERTO RICO,

Debtor.

PROMESA

Title III

No. 17 BK 3566-LTS

(Jointly Administered)

-----X

**NOTICE OF URGENT MOTION FOR ENTRY
OF AN ORDER APPROVING STIPULATION BETWEEN
THE COMMONWEALTH OF PUERTO RICO AND THE EMPLOYEES
RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH
OF PUERTO RICO REGARDING THE TOLLING OF STATUTE OF LIMITATIONS**

PLEASE TAKE NOTICE that the Commonwealth of Puerto Rico (the
“Commonwealth”) and the Employees Retirement System of the Government of the

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Commonwealth of Puerto Rico (“ERS,” and together with the Commonwealth, the “Debtors”), as Title III debtors, by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the Debtors’ representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), are filing the annexed *Urgent Motion for Entry of an Order Approving Stipulation Between the Commonwealth of Puerto Rico and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico Regarding the Tolling of Statute of Limitations* (the “Urgent Motion”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Urgent Motion must be in writing, must conform to the Federal Rules of Bankruptcy Procedure and the *Seventh Amended Notice, Case Management and Administrative Procedures* [ECF No. 4086-1] (the “Case Management Procedures”), and must be filed with the Court (a) by registered users of the Court’s case filing system, electronically in accordance with rule 5 of the Local Rules for the District of Puerto Rico, and (b) by all other parties in interest, on a CDROM, in text-searchable portable document format (PDF), and served on (i) counsel for the Oversight Board, Proskauer Rose LLP, Eleven Times Square, New York, New York 10036-8299 (Attn: Martin J. Bienenstock, Esq. and Brian S. Rosen, Esq.), and A&S Legal Studio, PSC, 434 Avenida Hostos, San Juan, PR 00918 (Attn: Luis F. del Valle-Emmanuelli, Esq.); (ii) counsel for the Puerto Rico Fiscal Agency and Financial Advisory Authority, O’Melveny & Myers LLP, 7 Times Square, New York, New York 10036 (Attn: John J. Rapisardi, Esq., Suzanne Uhland, Esq., and Peter Friedman, Esq.) and Marini Pietrantoni Muñiz LLC, MCS Plaza, Suite 500, 255 Ponce de León Ave., San Juan, PR 00917 (Attn: Luis C. Marini-Biaggi, Esq.); and (iii) the Office of the United States Trustee for Region 21, Edificio Ochoa, 500 Tanca Street, Suite 301, San Juan, PR 00901-

1922, so as to be received no later than **February 27, 2019 at 4:00 p.m. (Atlantic Standard Time)**.

PLEASE TAKE FURTHER NOTICE that, if necessary, a hearing will be held before the Honorable Laura Taylor Swain, United States District Court Judge, at a time and place to be determined by the Court, to consider the relief sought by the Debtors in the Urgent Motion.

PLEASE TAKE FURTHER NOTICE that the relief requested in the Urgent Motion may be granted without a hearing if no objection is timely filed, served, and received in accordance with the Case Management Procedures.

PLEASE TAKE FURTHER NOTICE that copies of the Urgent Motion and all documents filed in these title III cases are available (a) free of charge by visiting <https://cases.primeclerk.com/puertorico> or by calling +1 (844) 822-9231, and (b) on the Court's website at <http://www.prd.uscourts.gov>, subject to the procedures and fees set forth therein.

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Dated: February 25, 2019
San Juan, Puerto Rico

Respectfully submitted,

/s/ Brian S. Rosen

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Co-Attorneys for the Financial Oversight and Management Board as Representative for the Employees Retirement System of the Government of the Commonwealth of Puerto Rico

Objection Deadline: February 27, 2019 at 4:00 p.m. (AST)

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**UNITED STATES DISTRICT COURT
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In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, et
al.,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE EMPLOYEES RETIREMENT SYSTEM OF
THE GOVERNMENT OF THE
COMMONWEALTH OF PUERTO RICO,

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PROMESA

Title III

No. 17 BK 3566-LTS

(Jointly Administered)

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**URGENT MOTION FOR
ENTRY OF AN ORDER APPROVING STIPULATION BETWEEN
THE COMMONWEALTH OF PUERTO RICO AND THE EMPLOYEES
RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH
OF PUERTO RICO REGARDING THE TOLLING OF STATUTE OF LIMITATIONS**

To the Honorable United States District Court Judge Laura Taylor Swain:

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

The Commonwealth of Puerto Rico (the “Commonwealth”) and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS,” and together with the Commonwealth, the “Debtors”), as Title III debtors, by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the Debtors’ representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² respectfully submit this urgent motion (the “Urgent Motion”), for entry of an order approving a stipulation, attached hereto as Exhibit A (the “Stipulation”),³ between the Commonwealth and ERS that, among other things, tolls the statutes of limitations in connection with certain alleged avoidance actions (the “Avoidance Actions”) purportedly possessed by ERS and the Commonwealth against one another. In support of this Urgent Motion, the Debtors respectfully represent as follows:

Background

1. On May 3, 2017, a petition under Title III of PROMESA was filed on behalf of the Commonwealth with the United States District Court for the District of Puerto Rico.
2. On May 21, 2017, a petition under Title III of PROMESA was filed on behalf of ERS with the United States District Court for the District of Puerto Rico (the “ERS Title III Case”). The institution of the ERS Title III Case triggered the automatic stay of creditor remedies against ERS. *See* 48 U.S.C. § 2161(a) (incorporating 11 U.S.C. §§ 362 and 922 into PROMESA).
3. Commencing in early February, discussions among the Commonwealth, ERS, and certain ERS bondholders (the “ERS Bondholders”) ensued regarding the tolling of statutes of

² PROMESA has been codified in 48 U.S.C. §§ 2101–2241.

³ Descriptions of the Stipulation contained herein are for summary purposes only. The terms and provisions of the Stipulation govern to the extent any inconsistencies exist between the Stipulation and the descriptions of the Stipulation contained herein.

limitations applicable to the Avoidance Actions, which, absent the Stipulation, would expire in May, 2019 or, based upon certain postpetition transactions, in July, 2019. Although an agreement had been reached, such understanding had not been fully documented.

4. On February 19, 2019, and out of an abundance of caution, the ERS Bondholders filed the *Motion of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico for Appointment as Trustees under 11 U.S.C. § 926* [ECF No. 5169] (the “Trustee Motion”), requesting entry of an order appointing the ERS Bondholders as trustee to pursue certain of the Avoidance Actions on behalf of ERS against the Commonwealth or, in the alternative, appointing an independent third-party fiduciary as trustee to pursue such actions.

5. Despite the filing of the Trustee Motion, discussions regarding the tolling continued and a written agreement, the Stipulation, was reached.

Relief Requested

6. In an effort to promote judicial economy and provide parties in interest with sufficient time to continue settlement discussions, the Debtors, through the Oversight Board and AAFAF, have agreed, among other things, to toll the statutes of limitations in connection with the Avoidance Actions such that the Statutory Deadlines (as defined in the Stipulation) shall expire two hundred seventy (270) days after the date on which the Statutory Deadlines would have expired in the absence of the Stipulation. Such period may be shortened or extended upon appropriate notice being provided to the Court and the ERS Bondholders. Additionally, the Stipulation provides that the tolling of the statutes of limitations extends to the officials of the Commonwealth and ERS and limits any Avoidance Actions against such officials solely to their official capacity.

7. Accordingly, the Stipulation attached hereto as **Exhibit A** has been executed by the Debtors and is now being presented to this Court through this Urgent Motion for approval and entry on the docket. Upon entry of the fully-executed Stipulation on the docket, the ERS Bondholders have agreed to withdraw the Trustee Motion, without prejudice, thereby postponing costly and premature litigation in an effort to pursue a more consensual restructuring.

8. Pursuant to Paragraph I.H of the Case Management Procedures, the Debtors hereby certify that they have carefully examined the matter and concluded that there is a true need for an urgent motion; have not created the urgency through any lack of due diligence; have made a bona fide effort to resolve the matter without a hearing; and have made reasonable, good-faith communications in an effort to resolve or narrow the issues that are being brought to the Court.

Notice

9. The Debtors have provided notice of this Urgent Motion to: (a) the Office of the United States Trustee for the District of Puerto Rico; (b) the indenture trustees and/or agents, as applicable, for the Debtors' bonds; (c) the entities on the list of creditors holding the 20 largest unsecured claims against the Debtors; (d) the statutory committees appointed in these Title III Cases; (e) the Office of the United States Attorney for the District of Puerto Rico; (f) counsel to the Puerto Rico Fiscal Agency and Financial Advisory Authority; (g) the Puerto Rico Department of Justice; and (h) all parties filing a notice of appearance in these Title III Cases. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

10. No prior request for the relief sought in this Urgent Motion has been made to this or any other court.

WHEREFORE the Debtors respectfully request the Court to approve and enter the Stipulation, attached hereto as **Exhibit A**, and grant the Debtors such other relief as is just and proper.

Dated: February 25, 2019
San Juan, Puerto Rico

Respectfully submitted,

/s/ Brian S. Rosen

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as Representative for the Employees
Retirement System of the Government of the
Commonwealth of Puerto Rico*

Exhibit A

Stipulation

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

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In re: PROMESA
THE FINANCIAL OVERSIGHT AND Title III
MANAGEMENT BOARD FOR PUERTO RICO, No. 17 BK 3283-LTS
as representative of (Jointly Administered)

THE COMMONWEALTH OF PUERTO RICO, et
al.,

Debtors.¹

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In re: PROMESA
THE FINANCIAL OVERSIGHT AND Title III
MANAGEMENT BOARD FOR PUERTO RICO, No. 17 BK 3566-LTS
as representative of (Jointly Administered)

THE EMPLOYEES RETIREMENT SYSTEM OF
THE GOVERNMENT OF THE
COMMONWEALTH OF PUERTO RICO,

Debtor.

-----X

**STIPULATION BETWEEN THE COMMONWEALTH OF PUERTO RICO AND THE
EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE
COMMONWEALTH OF PUERTO RICO REGARDING THE TOLLING OF STATUTE
OF LIMITATIONS AND [PROPOSED] ORDER**

The Commonwealth of Puerto Rico (the “Commonwealth”), by and through Autoridad de
Asesoría Financiera y Agencia Fiscal de Puerto Rico, whose name in English is the Puerto Rico

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Fiscal Agency and Financial Advisory Authority (“AAFAF”), and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the representative of ERS, do hereby stipulate as follows:

RECITALS

- A. On May 21, 2017, the Oversight Board issued a restructuring certification in accordance with Section 206(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”).
- B. On May 21, 2017, in accordance with Section 302(2) of PROMESA, the Oversight Board filed a petition for relief on behalf of ERS, thereby commencing a case under Title III (the “ERS Title III Case”).
- C. Commencement of the ERS Title III Case triggered the operation of the automatic stay, extant pursuant to section 362 of title 11 of the United States Code (the “Bankruptcy Code”), and applicable to the ERS Title III Case pursuant to Section 301(a) of PROMESA, to protect ERS’s property wherever located.
- D. Actions with respect to avoidance claims (the “Avoidance Actions”), including, without limitation, alleged fraudulent transfers or unauthorized postpetition transfers between, among others, the Commonwealth and ERS, pursuant to sections 544, 549 and 550 of the Bankruptcy Code, applicable to the ERS Title III Case pursuant to Section 301 of PROMESA must be commenced, to the extent applicable and available in accordance with sections 546(a) and 549(d) of the Bankruptcy Code.

E. Certain holders of ERS bonds represented by the counsel set forth in Paragraph 1 hereof (the “Bondholders”) allege that ERS possesses avoidance claims against the Commonwealth in connection with certain postpetition transfers.

F. In order to protect all parties’ rights and interests, the Commonwealth and ERS, through the Oversight Board and AAFAF, respectively, have agreed to toll the statute of limitations in connection with the Avoidance Actions.

NOW THEREFORE, IT IS HEREBY AGREED THAT:

AGREEMENT

1. The period in which Avoidance Actions of the Commonwealth, on the one hand, and ERS, on the other hand, must be commenced against one another pursuant to sections 546(a) and 549(d) of the Bankruptcy Code (the “Statutory Deadlines”) shall be tolled such that the Statutory Deadlines shall expire (a) two hundred seventy (270) days from and after the date on which the Statutory Deadlines would have expired in the absence of this Stipulation unless (b) the Commonwealth or ERS provide written notice of early termination (the “Termination Notice”) in accordance with clauses (A) and (B) below, in which case, the Statutory Deadlines shall expire on the date that is one hundred fifty (150) days from the delivery of such Termination Notice plus the number of days between the Stipulation Effective Date, as defined below, and the date on which the Statutory Deadlines would have expired in the absence of this Stipulation to: (A) the Court, through the filing of an informative motion, and counsel to the Bondholders, by serving a copy of such Termination Notice upon (B) (i) Jones Day, 250 Vesey Street, New York, NY 10281, Attn: Bruce S. Bennett, Esq., by hardcopy and email transmission (bbennett@jonesday.com), and (ii) White & Case LP, 200 South Biscayne Boulevard, Suite 4900, Miami, FL 33131, Attn: John K. Cunningham, Esq., by hardcopy and email transmission

(jcunningham@whitecase.com); provided, however, that, the foregoing is without prejudice to (y) the rights, interests and defenses that may be raised by either the Commonwealth or ERS in connection with any such Avoidance Actions, other than the applicable statute of limitations, laches, or any other time-related defense and, (z) the treatment of the Statutory Deadlines as may be provided in a plan of adjustment for the Commonwealth or ERS, subject to the effectiveness and consummation of any such plan of adjustment.

2. The Commonwealth and ERS shall have the right to extend the period set forth in Paragraph 1(a) above for a period specified in writing upon thirty (30) days' prior written notice and service of such notice upon the Court and counsel for the Bondholders in the matter set forth above.

3. The persons signing this Stipulation on behalf of the Commonwealth and ERS have the authority to bind such parties.

4. This Stipulation shall apply to and be binding upon the Commonwealth and ERS, together with their successor and assigns, including, without limitation, any trustee which may be appointed pursuant to section 926 of the Bankruptcy Code in either the ERS Title III Case or the Commonwealth Title III Case.

5. Notwithstanding not being parties hereto, the Bondholders shall be expressly deemed third party beneficiaries of this Stipulation.

6. Except as expressly provided herein, this Stipulation shall not be amended or modified without the prior written consent of the Bondholders.

7. This Stipulation shall become effective upon the date the Court enters an order approving this Stipulation (the "Stipulation Effective Date").

8. This Stipulation and the rights, interests and defenses referred to herein extends to any claims or causes of action that could be brought or asserted against the Commonwealth or ERS officials solely in their official capacity (it being expressly understood that neither the Commonwealth nor ERS would seek to impose monetary liability on any such officers, but rather, would only assert claims and causes of action against any such officers in their official capacity).

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/s/ Brian S. Rosen

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SO ORDERED.

Dated: _____, 2019
San Juan, Puerto Rico

LAURA TAYLOR SWAIN
United States District Judge